Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of:)	
)	
Petition of Neutral Tandem, Inc.)	
for Interconnection with Verizon)	Docket No. 06-159
Wireless, Inc. Pursuant to Sections)	
201(a) and 332(c)(1)(B) of the)	
Communications Act of 1934, as Amended)	
)	

REPLY COMMENTS OF NEUTRAL TANDEM, INC.

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Dated: September 25, 2006

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Summary

September 11, 2001, focused a tragic light on the dramatic weaknesses in this nation's telecommunications fabric. In its efforts to restore service to millions impacted by the disaster, Verizon, the dominant LEC serving New York, relied heavily on the facilities, services and efforts of its fellow carriers. The dependence of Verizon on other telecommunications suppliers and the need for carrier diversity was acknowledged by Verizon's CEO, Ivan Seidenberg:

"There's been a lot written about the potential vulnerability of the communications network in the wake of the 9/11 attacks. Clearly, we have some new security concerns related to safeguarding our key network assets and we're working on those with our customers, vendors, other carriers and policy makers. But here's the real lesson about to how to ensure the security of the nation's communication system, a lesson that needs to be front and center in the debate about how to make our country stronger in the wake of this tragedy. What 9/11 showed us is that the true security lies in having a diversity of technologies that give customers redundant capabilities and provide alternative ways for Americans to communicate. You need to have more than just Verizon."

Four short years later, Hurricane Katrina ripped apart huge swaths of the southeast coast of the United States. The devastating damage caused by its historic destruction and fury is still with us today. Due to the dramatic impact Hurricane Katrina had on the telecommunications infrastructure in the region, FCC Chairman Martin commissioned an independent panel to examine the impact of the worst natural disaster in our nation's history. One of the critical key findings of the panel echoed the words of Verizon's CEO above:

"The high volume routes from tandem switches, especially in and around New Orleans were especially critical and vulnerable. Katrina highlighted the need for diversity of call routing and avoiding strict reliance upon a single routing solution."

Chairman Martin recently pledged to Congress in his reconfirmation hearings that the Commission will apply the lessons learned from Hurricane Katrina and take steps to prevent

such catastrophic damage and impact on citizens relying on the telecommunications infrastructure. This proceeding is the Commission's first test of that pledge.

In its continued attempts to minimize the competitive and network diversity benefits of Neutral Tandem's service, Verizon Wireless has made numerous misstatements, waved red herrings, and invoked fabrications. Verizon Wireless' gamesmanship would be troubling in any context, but is especially so in light of the significant public safety issues in this proceeding. Verizon Wireless seeks to distract the Commission from the clear public interest benefits supporting the interconnection of its switches to a diverse tandem switch, located in a diverse switch site, using diverse transport carriers over diverse routes. Neutral Tandem's service provides real and significant network redundancy and diversity to the PSTN and yields significant competitive benefits to all carriers. The public's need for network redundancy and the homeland security benefits related to tandems were explicitly highlighted in the recent Katrina Report, and Neutral Tandem respectfully requests that the Commission abide by the recommendations made by that panel and approve Neutral Tandem's Petition promptly, which will directly benefit the security and redundancy of the PSTN.

In contrast to AT&T and Cingular's positive working relationship with Neutral Tandem, Verizon Wireless and Verizon have colluded to put their corporate interests ahead of the Commission's public policy goal and charter of providing for the public safety. The fact that Neutral Tandem threatens Verizon's tandem business has clearly given Verizon Wireless the incentive to forgo the efficiencies and network security associated with direct connection with Neutral Tandem, and absolutely refuse any connectivity on any terms. Verizon Wireless' sleight of hand attempt to move this proceeding into the Intercarrier Compensation rulemaking is transparently designed to delay and thus deny Neutral Tandem's carrier customers, as well as the entire PSTN, the efficiencies and homeland security benefits associated with its service. Put simply, this is not

a dispute over the terms of interconnection, but instead over Verizon Wireless' outright refusal to interconnect at all. Verizon Wireless has gamed this position for over two years by breaching a prior interconnection agreement with Neutral Tandem in bad faith. Neutral Tandem, its carrier customers, and the public have waited long enough for the relief sought in the Petition.

Further, while the Commission may be confused by the numerous inconsistent positions taken by Verizon Wireless and its ILEC parent, Neutral Tandem notes that these inconsistencies are a direct result of protecting their corporate interests. When in their financial interest to do so, these two companies have had no problems *insisting* on direct connections when traffic levels (at levels below those requested under the Petition) warrant such connections, while at the same time denying for anti-competitive reasons that same interconnection to Neutral Tandem when doing so threatens Verizon's tandem service market.

For example, in the *Time Warner Cable* proceeding, Verizon directly stated that wholesale carriers have the right to interconnect. However, Verizon Wireless has argued against interconnection with Neutral Tandem exactly for that reason: because Neutral Tandem is a "wholesale carrier." As also pointed out by Neutral Tandem in the *Time Warner Cable* proceeding, Verizon Communications has refused Neutral Tandem's right to even indirectly interconnect with Verizon Wireless (and all other carriers for that matter) on the basis that Neutral Tandem is a "wholesale carrier." Thus, taken together, Verizon and Verizon Wireless' positions would bar Neutral Tandem connecting directly *and* indirectly with Verizon Wireless. This anti-competitive, collusive conduct—aptly described by another party as a "squeeze play"—is precisely what the Commission foresaw in the *CMRS NPRM* when it cautioned that it would move vigilantly against attempts by wireless affiliates of LECs seeking to leverage their LEC affiliation by denying direct connections.

Further, Verizon and Verizon Wireless have also inconsistently applied policies concerning the level of traffic warranting direct connections. Verizon routinely requires competitive carriers to seek direct connections between switches if more than a T-1's worth of traffic is passed between the switches. Verizon Wireless has refused to interconnect with Neutral Tandem (and threatens to take down existing connections) even though Neutral Tandem has multiple DS-3's worth of traffic destined for Verizon Wireless' switches. Verizon Wireless' refusals to efficiently interconnect with Neutral Tandem are a result of these carriers attempting to shield Verizon's tandem services from effective competition.

Again, Verizon and Verizon Wireless' actions can be sharply distinguished from those of AT&T and Cingular. Even where AT&T is the LEC operating competing tandems, both AT&T's CLEC affiliate and its wireless affiliate, Cingular, freely connect with Neutral Tandem for the termination (and sometimes origination) of traffic. Unlike Verizon Wireless, Cingular has not put corporate greed ahead of the network efficiency, redundancy, and homeland security Neutral Tandem's services provide. This position by AT&T actually strengthens tandem redundancy, providing benefits to the PSTN at large.

Section 1 of the Communications Act charges the Commission with the protection of national defense, safety, and property. To meet these and other responsibilities, Congress granted the Commission the authority to order interconnection under Section 201 upon the request of a carrier when it is in the public interest. Neutral Tandem respectfully requests that the Commission exercise the authority vested by Congress and grant the relief requested in Neutral Tandem's Petition for Interconnection.

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REPLY COMMENTS OF NEUTRAL TANDEM, INC.

I. INTRODUCTION

Neutral Tandem, Inc. ("Neutral Tandem" or "Company") hereby files its reply comments in the above-captioned proceeding concerning Neutral Tandem's *Petition for Interconnection* with Verizon Wireless ("Verizon Wireless" or "VW"). As the comments and other filings in this proceeding demonstrate, the relief requested in Neutral Tandem's Petition is warranted under Section 201(a) of the Communications Act of 1934, as amended (the "Act"). The Petition and comments clearly demonstrate that the physical connections requested by Neutral Tandem are "necessary or desirable in the public interest" because they will promote network reliability, diversity, and disaster recovery; be economically efficient, and will result in lower costs to the users of telecommunications service. Such connections will permit Neutral Tandem's carrier customers to exchange traffic with VW more economically and more reliably.

Regrettably, VW has chosen to base its opposition to the Petition on a vast collection of distortions, red herrings, and outright misrepresentations, rather than deal with the merits forth-

See Petition of Neutral Tandem, Inc. for Interconnection with Verizon Wireless, Inc. Pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as Amended, Docket No. 06-159 (filed Aug. 2, 2006) ("Petition"). Neutral Tandem and VW are collectively referred to as the "Parties." For brevity, the initial comments filed in this docket are cited solely by name of the commenting party and page number.

rightly. This campaign of distortion even extends to the ridiculous length of repeatedly referring to Neutral Tandem's *Petition for Interconnection* as a "Petition for Rulemaking," in a transparent effort to confuse the important issues at hand. Neutral Tandem is not seeking a broad, industry-wide rulemaking, but rather a carrier-specific final order compelling interconnection pursuant to Section 201(a). Neutral Tandem is forced to respond at some length to these spurious arguments, in addition to addressing the concerns expressed by other commenting parties.

Neutral Tandem adds significant and real redundancy to the public telecommunications network. Neutral Tandem adds diverse switches, diverse switch sites, diverse transport carriers, and diverse routes to the PSTN. Increasing redundancy across the PSTN is clearly in the public interest, particularly adding redundancy at the tandem choke-points of the PSTN. As recently noted in the extensive Katrina Report, added tandem network redundancy and diversity is a major requirement for disaster preparedness and homeland security in the United States. VW's comments disparaging the need for such redundancy are troubling, especially coming from the leading wireless carrier in New York, a state and city particularly sensitive to the need for improving homeland security. Nonetheless, most other commenters to this proceeding have not taken such a cavalier attitude towards the critical benefits Neutral Tandem provides to public safety.

The Commission has also found that network interconnectivity is such a compelling public interest under Sections 201(a) and 332(c)(1)(B) that the Commission is mandated to commence proceedings when it receives interconnection requests. Interconnectivity among telecommunications carriers, including CMRS carriers, serves the public interest, but VW's refusal to interconnect with Neutral Tandem forces all transiting and access carriers to route their traffic to Verizon Wireless customers through an incumbent LEC's tandem and forego the cost savings offered by a competitive alternative. Verizon Wireless should heed the words of Veri-

zon's CEO about the most important lesson learned from the network disruptions caused by the attacks on September 11, 2001, and not just rely on Verizon (the LEC) for connectivity.

Verizon Wireless is not overly troubled by consistency in its comments here. It claims that Commission orders in CC Docket No. 94-54 and subsequent cases establish that the Commission should not even consider interconnection requests under Section 201(a) directed at CMRS carriers. But in that docket, it argued precisely the opposite—that the Commission should consider future Section 201(a) requests on a case-by-case basis—and the Commission agreed. The orders it cites applied only to reseller interconnection demands and to direct CMRS-to-CMRS connections, neither of which are at issue in this case. Moreover, Section 332(c)(1)(A) of the Act specifically forbids exempting CMRS carriers from Section 201 interconnection duties. Additionally, some wireless commenters appear to believe that their interconnection duties begin and end in Section 251 of the Act. That is clearly incorrect, because Section 251 expressly states that it shall not be construed to *limit or otherwise affect* the Commission's authority under Section 201, and the Commission has informed CMRS carriers that it will require interconnection when the public interest demands it. Thus while the Commission has declined establishing mandatory interconnection obligations, it has, consistent with the Act, reserved the power to order interconnection where needed.

In another instance of inconsistency, VW claims that direct connections of three DS-1s capacity and higher would not be efficient. But, VW's own counsel in this proceeding, Charon Philips, testified under oath before the Georgia Public Service Commission that direct connections *would* be efficient at traffic levels equivalent to *two* DS-1s. Verizon Wireless' ILEC parent has also publicly endorsed similar policies. As demonstrated below, direct connection with Neutral Tandem is efficient, and Verizon Wireless' denials of that fact clearly demonstrate its desire to protect the tandem service market of its ILEC parent, Verizon.

Verizon Wireless and other wireless commenters have urged that this matter be considered in the Commission's Intercarrier Compensation proceeding ("ICC"). This is obviously a ploy to delay and thus deny consideration of the issues presented in the Petition by pushing them into a long-standing proceeding aimed at much more complex telecommunications compensation arrangements. The ICC docket should not be used as a "recycling bin" by persons seeking to delay decisions on important issues they would rather the Commission not address.

Verizon Wireless hypocritically urges the Commission to rely on "private negotiations and arrangements" for carrier interconnection when this case exists only because of Verizon Wireless' outright *refusal* to negotiate interconnection on any terms whatsoever. It has refused Commission attempts to mediate this dispute and refused to negotiate on any basis. This is not a case of companies in a competitive market that have a disagreement over terms, but rather of a carrier seeking to exploit a bottleneck by refusing to deal at all.

Neutral Tandem respectfully requests that the Commission grant the pending Petition, as well as the pending Motion in the above-referenced docket that the existing circuits between Neutral Tandem and VW remain in place pending the disposition of this proceeding. Absent swift Commission action, the loss of existing direct connections between Neutral Tandem and Verizon Wireless, as well as the inability of Neutral Tandem to obtain such direct connections with Verizon Wireless going forward, will cause irreparable disruption to Neutral Tandem, its customers, and the PSTN at large. The disruption of the successfully operating direct connections already in place between Neutral Tandem and Verizon Wireless will likely result in (i) blocking of traffic destined for termination to VW end users from Neutral Tandem's carrier customers and from their ultimate end users, due to ILEC tandem capacity constraints, and (ii) isolating VW's switches from Neutral Tandem's redundant tandem connectivity and termination paths in the event of a network disruption.

II. THE INTERCONNECTION SOUGHT BY NEUTRAL TANDEM IS IN THE PUBLIC INTEREST

A. Tandem Competition Enhances Homeland Security and Network Redundancy

1. Tandem Competition Bolsters Network Redundancy

Neutral Tandem adds significant and real redundancy to the public telecommunications network in those markets where it operates.² Specifically, Neutral Tandem <u>hardens</u> the PSTN by adding multiple layers of diversity to the public network through constructing and using diverse physical facilities provided by Neutral Tandem and numerous competitive carriers completely independent of ILECs. Neutral Tandem adds diverse switches, diverse switch sites, diverse transport carriers, and diverse routes to the PSTN. The PSTN benefits substantially from all these multiple layers of diversity, which are delivered by Neutral Tandem not only at no cost to end users of the PSTN, but at a discount to what carriers are incurring today. Neutral Tandem is a marketplace solution to a critical public interest need: hardening our telephony infrastructure.

The comments of Neutral Tandem's carrier customers and others show the tangible redundancy benefits delivered by Neutral Tandem.³ VW's attempts to minimize those benefits by mischaracterizing Neutral Tandem as some type of reseller⁴ are misguided at best and plainly erroneous. More connections, more diverse termination paths, more diversity in those connections, switches, and switch sites across the PSTN are much more preferable to fewer connections and greater concentration of traffic on the ILEC tandems, which results in more vulnerability to traffic disruptions and network outages. By serving not only multiple but diverse types of

² For diagrams showing an example of the network redundancy and diversity Neutral Tandem provides to the PSTN in New York, see Attachment A.

³ See, e.g., COMPTEL at 3; Integra at 3; McLeodUSA at 3; Joint Commenters at 1; One Communications at 1.

⁴ See Verizon Wireless at 21 (erroneously speculating that Neutral Tandem may be collocating its facilities with ILEC tandems).

carriers, Neutral Tandem can drive efficiency and diverse connectivity that a single carrier's traffic could not economically justify.

Contrary to VW's assertion that Neutral Tandem only duplicates existing ILEC tandem arrangements,⁵ Neutral Tandem's services are not "layered over" ILEC facilities. In fact, Neutral Tandem does not collocate any of its switching equipment with ILECs and makes every effort not to use any ILEC transport facilities. Neutral Tandem's transport network includes facilities secured from all the various fiber carriers in the market, complete with redundant connectivity and entirely separate from ILEC tandems. Neutral Tandem uses nearly 40 different fiber carriers companywide, including nine (9) fiber carriers in Chicago, 11 carriers in New York and nine (9) carriers in Florida. Neutral Tandem has no preferred fiber transport vendor; instead, it seeks to spread its traffic across a superset of all the fiber carriers serving each market in which it operates. Because improving tandem service quality is a hallmark of its commitment, the Company goes to great lengths to build and protect new, redundant points of connectivity across the PSTN. Thus, Verizon Wireless could not be more wrong in suggesting that Neutral Tandem is automatically vulnerable to any disaster that affects an ILEC facility. 6 Hardening our nation's infrastructure requires that carriers not "put all their eggs in one basket," which is what VW wants every other carrier in the market to do by insisting that transit traffic terminating to VW can only flow through ILEC tandem switches. Again, Verizon Wireless should heed the words of its parent's

⁵ See Verizon Wireless at 21. As a variant of its "duplication" argument, VW also claims that interconnection is unnecessary because Neutral Tandem "provides service to no end users, and there is thus no need [to interconnect] ... at all in order to terminate customer traffic." *Id.* at 15. This is like arguing that since AT&T's interstate network is capable of handling all long-distance calls, there is no need for ILECs to provide access to any other interexchange carrier. The Commission long ago rejected such reasoning as inconsistent with both economic logic and public policy, and should do so again here.

⁶ See Verizon Wireless at 21.

⁷ See COMPTEL at 3; McLeodUSA at 5.

CEO and not just rely on Verizon and the LEC for tandem connectivity. The FCC cannot allow such an astonishingly risky and arrogant policy to stand.

2. Network Redundancy Bolsters Homeland Security

In his recent confirmation hearings before the Senate, Chairman Martin recently high-lighted the importance that homeland security, public safety and emergency preparedness bear to the Commission's fundamental policy goals. Increased redundancy across the PSTN, especially when driven by a marketplace solution, would serve to enhance those goals, and as such, is clearly in the public interest. As recently noted in the extensive Katrina Report, added network redundancy and diversity, particularly in the tandem choke-points of the PSTN, is a major requirement for disaster preparedness and homeland security in the United States. In reviewing the detailed reports from each communications sector, there were three main problems that caused the majority of communications network interruptions: (1) flooding; (2) lack of power and/or fuel; and (3) failure of redundant pathways for communications traffic. The Katrina Report further notes that during the New Orleans disaster, It]he switches that failed, especially tandems, had widespread effects on a broad variety of communications in and out of the Katrina region.

As an example, a major tandem switch in New Orleans was isolated, which meant that no communications from parts of New Orleans to outside the region could occur. This switch, an access tandem that carried long distance traffic through New Orleans and

⁸ See Written Statement of the Honorable Kevin J. Martin, Chairman Federal Communications Commission, Before the Committee on Commerce, Science & Transportation, U.S. Senate, at 4, 12, 2006) ("Chairman Martin Statement").

⁹ See Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Notice of Proposed Rulemaking, EB Docket No. 06-119, Appendix B, Report and Recommendations to the Federal Communications Commission ("Katrina Report").

¹⁰ Katrina Report at 13 (emphasis added).

¹¹ Katrina Report at 14.

out to other offices, had two major routes out of the city (one to the east and one to the west). The eastern route was severed by a barge that came ashore during the hurricane and cut the aerial fiber associated with the route. If only this route had been lost, the access tandem traffic could have continued. However, the western route was also severed—initially by large trees falling across aerial cables, then subsequently by construction crews removing debris from highway rights-of-way. While there were provisions for rerouting traffic out of the city, the simultaneous loss of both of these major paths significantly limited communications service in parts of New Orleans.¹²

Interestingly, while most lay persons knew that Katrina's flooding caused disruptions in communications and that the lack of power led to cell sites and battery power being drained, it took the focused analysis of the Katrina Panel to pinpoint what many in the industry are growing anxiously aware of: The increasing dependence on the ILEC tandem networks as the gateway for nearly <u>all</u> traffic exchange between all wireless, CLEC, IXC, cable and IP carriers is an unnecessary choke point in nation's communications infrastructure that must be addressed immediately.

In sum, the Katrina Report shows the exigency of developing redundant tandem pathways and redundant traffic routing. The FCC's primary goal of protecting the national defense and "promoting safety of life and property through the use of wire and radio communications" would be served by establishing a policy of advancing such telecommunications redundancy in the United States. As noted by the Katrina Report, "Katrina highlighted the dependence on tandems and tandem access....The high volume routes from tandem switches, especially in and around New Orleans were especially critical and vulnerable. Katrina highlighted the need for diversity of call routing and avoiding strict reliance upon a single routing solution." 14

¹² *Id*.

¹³ 47 U.S.C. § 151. *See also* Chairman Martin Statement at 4 ("When I first became Chairman, I identified public safety and emergency preparedness as another top priority. As memories of Hurricane Katrina and 9/11 continually remind us, one of our most important objectives is to ensure that basic public safety requirements are met.").

¹⁴ Katrina Report at 9.

Neutral Tandem finds VW's comments disparaging the need for such redundancy troubling, ¹⁵ especially coming from the primary wireless carrier serving New York, a state and city particularly sensitive to the need for improving homeland security. Even Verizon Communications has realized that the public interest in network security must come before its own selfish corporate interests. As Ivan Seidenberg declared:

"There's been a lot written about the potential vulnerability of the communications' network in the wake of the 9/11 attacks. Clearly, we have some new security concerns related to safeguarding our key network assets and we're working on those with our customers, vendors, other carriers and policy makers. But here's the real lesson about to how to ensure the security of the nation's communication system, a lesson that needs to be front and center in the debate about how to make our country stronger in the wake of this tragedy. What 9/11 showed us is that the *true security lies in having a diversity of technologies that give customers redundant capabilities* and provide alternative ways for Americans to communicate. *You need to have more than just Verizon*." ¹⁶

This sentiment was echoed in a post-9/11 report on the telecommunications vulnerabilities of Lower Manhattan following the terrorist attacks: "Downtown's companies want additional options that are carrier-neutral and distinct from Verizon." ¹⁷

Fortunately, most of the commenters to this proceeding have not taken such a cavalier attitude towards the benefits Neutral Tandem provides to public safety. For example, COMPTEL notes that, "Neutral Tandem's direct connections with Verizon Wireless will advance network reliability and redundancy, will aid disaster recovery in the event of any overcapacity or outage

¹⁵ See generally Verizon Wireless at 21. "Neutral Tandem's references to the need for tandem 'redundancy' ... do not suffice to justify the costs to all wireless carriers of forcing them to interconnect directly with any requesting carrier." United States Cellular Corporation at 4.

¹⁶ Ivan Seidenberg, Co-CEO of Verizon Communications, Speech before the National Press Club Luncheon (Dec. 3, 2001), available at http://www.npr.org/programs/npc/2001/011203.iseidenberg.html; transcript at http://www.connectlive.com/events/verizon/transcript-120301.html (emphasis added).

¹⁷ Building a 21st Century Telecom Infrastructure; Lower Manhattan Telecommunications Users' Working Group Findings and Recommendations, at 5 (Aug. 2002).

situation, and will therefore promote homeland security."¹⁸ COMPTEL also states that "[t]he [Katrina Report] panel's findings illustrate why the presence of viable, alternative service providers such as Neutral Tandem, which adds redundancy to the telecommunications infrastructure, could minimize the negative impact in the event of future natural disasters."¹⁹ Further, Integra's comments note:

[T]he Petition demonstrates that an additional termination route to Verizon Wireless would enhance the public switched telephone network by increasing network reliability, diversity, homeland security, and disaster recovery. Independent tandem services such as those provided by Neutral Tandem are especially important to alleviate incumbent LEC tandem exhaust and call blocking due to tandem over capacity. Therefore, as illustrated in the Petition, the public benefits of the interconnection requested by Neutral Tandem are substantial and meet the criteria in Section 201(a).²⁰

McLeodUSA similarly points out that, "[a]llowing Neutral Tandem to directly interconnect with Verizon will increase network redundancy and reliability, areas the Commission has recently focused on as being necessary to promote disaster recovery." Similar comments were also filed by Cbeyond, One Communications, and the Joint Commenters.

¹⁸ COMPTEL at 5. See also COMPTEL at 3 ("Neutral Tandem's service offerings promote efficiency, redundancy, diversity, and increased reliability in the [PSTN], which in turn improves disaster recovery and results in enhanced homeland security").

¹⁹ COMPTEL at 5-6.

²⁰ Integra at 3.

McLeodUSA at 3. "Neutral Tandem adds redundancy and reliability to the network which can mitigate the negative impact of future natural disasters." *Id*.

²² See Cbeyond at 1 (noting that the provision of separate facilities increases the robustness of the PSTN in the event of outages).

²³ See Joint Commenters at 1 ("[C]reating an additional termination route to Verizon Wireless promotes network reliability, diversity, homeland security, and disaster recovery across the PSTN as a whole. The benefits are especially great in areas suffering from ILEC tandem exhaust and call blocking due to that tandem over-capacity"); One Communications at 1.

Given the importance of homeland security and disaster recovery, Neutral Tandem urges the Commission to grant the pending Petition, and allow Neutral Tandem the ability to direct connect with Verizon Wireless. While Neutral Tandem and its customers will benefit from the efficiencies of such an arrangement, it is undisputed that the public at large will also be served through enhanced redundancy in the telecommunications sector, especially in times of man-made or natural disasters.

B. Tandem Competition is in the Public Interest

As recognized by nearly every commenter in this proceeding, even wireless commenters, the creation of a competitive tandem market is in the public interest.²⁴ This position of course was long recognized by the FCC.²⁵ Thus, the physical connections and direct trunk "through routes" to VW sought by Neutral Tandem to establish such competition are in the public interest. Competitive alternative to the ILEC tandems cannot possibly exist if they cannot deliver traffic to terminating carriers. As noted by the Commission's *Tandem-Switching Order*:

By further reducing barriers to competition in switched access services, our actions will benefit all users of tandem switching.... Our actions also should promote more efficient use and deployment of the country's telecommunications networks, encourage technological innovation, and exert downward pressure on access charges and long distance rates, all of which should contribute to economic growth and the creation of new job opportunities. *In addition, these measures should increase access to diverse facilities, which could improve network reliability.* ²⁶

Indeed, the Commission has found that network interconnectivity is such a compelling public interest under Sections 201(a) and 332(c)(l)(B), that the Commission is mandated to

²⁴ See, e.g., Cbeyond at 1-2; COMPTEL at 4-7; Integra at 1-2; Joint Commenters at 1; McLeodUSA at 2; and One Communications at 1. "RCA supports efforts to provide competitive intercarrier transit and tandem-switched access services." Rural Cellular Association at 1.

²⁵ See, e.g., COMPTEL at 4-7; and McLeodUSA at 2.

²⁶ See Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, 9 FCC Rcd. 2718, ¶2 (1994) (emphasis added).

commence proceedings when it receives interconnection requests. "We read Section 332(c)(l)(B) of the Communications Act ... together with Section 201(a) to mean that the Commission *is* required to respond to requests for interconnection with proceedings to determine whether it is necessary or desirable in the public interests to order interconnection in particular cases."²⁷

Further, the Commission has stated that interconnectivity among telecommunications carriers, including CMRS carriers, serves the public interest. "[W]e believe that the interconnectivity of mobile communications networks promotes the public interest because it enhances access to all networks, provides valuable network redundancy, allows for greater flexibility in communications, and makes communications services more attractive to consumers. It is one further step toward a ubiquitous 'network of networks.'"²⁸ Although the Commission has not previously found it necessary to compel CMRS carriers to permit direct connections, it has always reserved the authority to do so if needed in a particular case, which is required by the Act.²⁹

VW's conduct in this case, if permitted to continue, would preclude tandem competition and therefore frustrate the diversity and efficiency benefits of such competition, as recognized by both the Commission and the parties to this case.³⁰ VW is asserting the right to determine unilaterally whether competitive carriers should be permitted to use a competitive tandem

²⁷ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking, 10 FCC Rcd. 10666, 10685-86 (1995) ("CMRS NPRM") (internal citations omitted).

²⁸ *Id.* at 10681, ¶ 128. The Commission further noted that "[t]he record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection—a form of interconnection explicitly recognized and supported by the Act." *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33, at ¶ 125 (rel. March 3, 2005) ("*Intercarrier Compensation FNPRM*"). The Petition is designed to facilitate the provision of competitive transit and access service. The Commission went on to solicit specific data and comment concerning the role of transit functions in a competitive market, and on whether a competitive market currently exists for tandem switching and transiting. *Id.* at ¶¶ 126-133.

²⁹ See COMPTEL at 4-7; Integra at 4-5; and McLeodUSA at 4.

³⁰ See COMPTEL at 4-7, Integra at 3; and McLeodUSA at 2. See also Rural Cellular Association at 1 (supporting efforts to provide competitive intercarrier transit and tandem-switched access services).

service, by refusing to accept any traffic that those carriers choose to deliver via a competitive tandem. The Commission should squarely reject VW's attempt to serve as competitive gate-keeper, and reaffirm its policy of promoting tandem competition by assuring that all tandems will be able to terminate traffic to VW where sufficient volumes exist.

C. Grant of the Petition Will Create Marketplace Efficiencies

Numerous commenters in this proceeding have confirmed the value and efficiency that Neutral Tandem's services provide. For example, "Cbeyond can lower its monthly transit costs by 20 to 25 percent in markets where it purchases transit service from Neutral Tandem. But VW's refusal to interconnect with Neutral Tandem forces Cbeyond to route its traffic to Verizon Wireless customers through an incumbent LEC's tandem and forego the cost savings offered by a competitive alternative." Cbeyond also notes that VW's refusal to interconnect with Neutral Tandem "threaten[s] to force competitors to deploy inefficient network architectures. In the absence of an alternative service provider, the requesting carrier must either build direct trunks to the other networks or purchase direct trunks from the ILEC when a requesting carrier's tandem traffic volume exceeds the limits permitted by the ILEC." Such network inefficiencies of the ILEC tandem network demonstrate that Neutral Tandem's requested relief is in the public interest, in the broadest sense of that phrase.

Neutral Tandem allows multiple competitive carriers to aggregate traffic to levels appropriate for direct interconnection, but which individually do not have enough traffic to justify direct connection and the redundancy benefits of establishing multiple traffic termination paths.³³

³¹ Cbeyond at 2.

³² Cbeyond at 3.

³³ Verizon Wireless repeatedly suggests that direct connections are somehow "superior" to tandem transit. Verizon Wireless at 15, 18. In reality, neither type of connection is "better" than the other; they serve different needs. Granting Neutral Tandem's petition would not preclude Verizon Wireless from establishing a direct connection with any other carrier upon mutual agreement, but as VW itself concedes,

Neutral Tandem thus creates network efficiencies, including for Verizon Wireless, which has expressed a desire to direct connect with carriers at larger traffic levels.³⁴ This increased efficiency, combined with Neutral Tandem's offer to pay 100% of the cost to deliver the traffic to VW's switch, leaves little doubt that Verizon Wireless would benefit by direct connecting with Neutral Tandem. Indeed, by aggregating such traffic, Neutral Tandem provides multiple benefits to its customers, Verizon Wireless, and the entire PSTN through "increased operational options, reduced transiting traffic costs, and decreased levels of tandem exhaust at ILEC tandems."³⁵

Absent Commission action, the loss of existing direct connections between Neutral Tandem and Verizon Wireless, as well as the inability of Neutral Tandem to obtain such direct connections with Verizon Wireless going forward, will cause irreparable disruption to Neutral Tandem, its customers, and the PSTN at large. Neutral Tandem has offered concrete evidence of tandem exhaust and the call blocking that will occur should these connections be terminated.³⁶ As previously noted in this proceeding, ILECs have reported tandem exhaust in some of the tandem locations at issue, which would only be exacerbated by the removal of Neutral Tandem's tandem capacity and connections in these markets.³⁷ Neutral Tandem's facilities free up capacity

the traffic volumes it exchanges with some carriers are far too small to justify such connections. See Section V.D. below.

³⁴ See Direct Testimony of Charon Phillips, Regulatory Counsel, Verizon Wireless, Georgia Public Service Commission Docket No. 16772-U (filed July 1, 2004) (emphasis added), at footnote 101, and accompanying text (concerning VW's direct connection traffic levels analysis). "ILECs generally limit tandem traffic volume to a DS1 of capacity, which is too low a volume to justify the deployment of direct trunks to other carriers' networks. Purchasing direct trunks at special access rates is also equally prohibitively expensive. Neutral Tandem offers a more efficient (and usually the only) alternative, aggregating traffic from multiple CLECs and CMRS providers (other than Verizon Wireless) over a direct trunk thereby spreading the costs of direct connection over multiple requesting carriers." Cbeyond at 3.

³⁵ COMPTEL at 5. See also Cbeyond at 2.

³⁶ See generally Petition, Saboo Declaration.

³⁷ See Neutral Tandem Motion for Interim Order Preserving the Status Quo, ¶¶ 27-30, 35, WC Docket No. 06-159 (filed Aug. 17, 2006).

on ILEC tandems, creating additional capacity to handle traffic spikes in the event of a network outage or crisis, and as such, loss of Neutral Tandem's connections will also affect non-Neutral Tandem customer carriers trying to squeeze calls through already-exhausted ILEC facilities.³⁸

The disruption of the successfully operating direct connections already in place between Neutral Tandem and Verizon Wireless will have the effect of (i) likely blocking traffic destined for termination with VW end users from Neutral Tandem's carrier customers and their end users due to ILEC tandem capacity constraints, and (ii) isolating VW's switches from Neutral Tandem's redundant tandem connectivity and termination paths in the event of a network disruption.³⁹ If any ILEC connections go down, there will be no opportunity for traffic to route over Neutral Tandem's redundant network to reach Verizon Wireless customers.

III. VERIZON WIRELESS' LEGAL OBJECTIONS ARE MERITLESS

A. The Commission Has Never Ruled on the Merits of this Dispute

Verizon Wireless baselessly claims that this proceeding is "repetitive" because Neutral Tandem previously sought Commission intervention in this dispute.⁴⁰ In reality, the Commission has never ruled on the merits of this dispute; rather, Neutral Tandem is pursuing the procedural path specifically recommended to it by Commission staff to secure such a ruling.

Wy's assertion that Neutral Tandem has failed to advise its customers of the impending termination of direct connections, Verizon Wireless at 28, is completely unfounded. Neutral Tandem has informed its customers regarding its dispute with Verizon Wireless and this (public) proceeding at the Commission. In fact, several Neutral Tandem customers have filed comments in this proceeding, clearly evidencing their understanding of the dispute between Verizon Wireless and Neutral Tandem. As noted by COMPTEL, "[m]any COMPTEL members have chosen to use Neutral Tandem's services to reduce the cost of interconnection and to deliver their traffic most efficiently." COMPTEL at 3. Seven (7) of the 12 Joint Commenters in this docket, and all of the other competitive carrier commenters, are Neutral Tandem customers. (The Joint Commenters are: Alpheus Communications, LP; CIMCO Communications, Inc.; Eschelon Telecom, Inc.; FDN Communications; Globalcom, Inc.; IDT Corporation; MegaGate Broadband, Inc.; OneEighty Communications, Inc.; PAETEC Communications, Inc.; PointOne, Inc.; RCN Telecom Services, Inc.; and TelePacific Communications and MPower Communications.)

³⁹ See Attachment A for a depiction of such network isolation.

⁴⁰ Verizon Wireless at 6.

On May 14, 2004, Neutral Tandem filed with the FCC's Enforcement Bureau a Request for Mediation and Accelerated Docket Treatment under Section 208 of the Act, alleging that VW's refusal to establish direct interconnection trunks violated Sections 201(a), 332(c)(1)(A), and 202 of the Act. After several months of mediation, the Parties agreed to resolve the dispute and on August 18, 2004, executing a Master Services Agreement ("MSA") drafted by Verizon Wireless. The Commission never reached the merits of Neutral Tandem's request because Neutral Tandem withdrew that request upon execution of the MSA, which provided for direct terminations between Neutral Tandem and Verizon Wireless in every overlapping market.

Unfortunately, Verizon Wireless breached the MSA not long after signing it by refusing direct terminations in New York (in an effort to protect its parent's tandem services business), and Neutral Tandem was forced to return to the Enforcement Bureau on May 12, 2005, with a request to be allowed to file a formal complaint on the Accelerated Docket. The Bureau offered to oversee mediation, but Verizon Wireless brazenly refused to mediate. On December 6, 2005, the Bureau declined Neutral Tandem's request for Accelerated Docket status, as it has discretion to do under 47 CFR § 1.730(e), without considering the merits (indeed, it could not have ruled on the merits, since no formal complaint was ever filed). Rather, the Enforcement Bureau informally suggested that Neutral Tandem file a petition under Section 201 to secure the requested interconnection. There is, simply, nothing "repetitive" in asking the Commission to rule for the first time, after over two years of controversy, on the public interest issue raised by VW's anticompetitive refusal to allow direct connections by the only competing tandem services provider.

B. The Commission Has Not Foreclosed Direct Connections to CMRS Carriers

Verizon Wireless and the other wireless commenters erroneously contend that the Commission has previously adopted a policy that prohibits Neutral Tandem or any other provider

from seeking direct connections to CMRS carriers under Section 201. The cases cited, however, are not on point and expressly state the contrary of this position.

Verizon Wireless cites the *CMRS Interconnection Order*⁴¹ as establishing that CMRS carriers need not provide direct connections to Neutral Tandem. However, that order applied only to *reseller* interconnection demands and to the issue of *mandatory* direct CMRS-to-CMRS connections, neither of which are at issue in this case. "This Report and Order resolves issues raised in 1995 in the Second NPRM in this proceeding concerning whether facilities-based commercial mobile radio service (CMRS) providers should be required to interconnect with CMRS *resellers' switches or with each others' networks*."⁴² The *CMRS Interconnection Order* did not address case-by-case requests for interconnection under Section 201, much less foreclose them.

Moreover, Section 332(c)(1)(A) of the Act specifically forbids exempting CMRS carriers from Section 201 interconnection duties. Indeed, in the *CMRS Order on Reconsideration*, the Commission expressly stated that "the Fourth Report and Order does not preclude the Commission from considering other requests for interconnection, but, as Verizon and CTIA recognize, merely rejected a rule requiring <u>mandatory</u> interconnection based on the record in this proceeding." Moreover, as the above quotation recognizes, Verizon Wireless itself, in contradiction to its position in this proceeding, argued that the *CMRS Interconnection Order* did not foreclose future Section 201 interconnection requests.

⁴¹ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Fourth Report and Order, 15 FCC Rcd. 13523 (2000) ("CMRS Interconnection Order").

⁴² CMRS Interconnection Order, ¶ 1 (emphasis added).

⁴³ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd. 10009 (2001) ("CMRS Order on Reconsideration") (emphasis added).

McLeodUSA correctly identifies the case-by-case determination required by the Act: "[t]he small portion of the order upon which Verizon relies only states that the Commission did not believe that mandatory interconnection was appropriate 'at this time.' In fact, [the *CMRS Interconnection Order*] specifically contemplates mandating such interconnection should circumstances change. Further, § 332(c)(1)(A) of the Act supports this interpretation by prohibiting the Commission from exempting CMRS carriers from any part of § 201."⁴⁴

Verizon Wireless claims that *Cellnet Communications v. New Par*⁴⁵ held that CMRS providers have no interconnection obligations. However, like the *CMRS Interconnection Order*, *Cellnet* involved a dispute between a CMRS provider and a reseller, as well as a request for two-way interconnection, in contrast to Neutral Tandem's Petition which only seeks one-way termination to Verizon Wireless switches. "The complainants, *resellers of cellular services*, argue that New Par and Comcast denied requests to enter into an agreement providing physical interconnection to the mobile telephone switching office (MTSO) for purposes of handling calls *to and from* the complainants' customers." Neutral Tandem does not seek to resell any VW service, nor to compel two-way interconnection, so *Cellnet* is simply inapposite.

Similarly, Verizon Wireless argues that parties in *Cellexis International v. Bell Atlantic NYNEX Mobile Systems*⁴⁷ agreed that the *CMRS Interconnection Order* disposed of Section 201, 251 and 332 claims under the Act. *Cellexis* also involved an interconnection dispute between a

⁴⁴ McLeodUSA at 4. Further, McLeodUSA notes that the recent *Triennial Review Remand Order* "eliminated UNE switching and substantially reduced the availability of UNE transport. The resulting loss of wholesale options for competitive carriers has heightened the need for competitive tandem services. [T]he Neutral Tandem service is precisely the type of facilities-based competition that the *TRRO* sought to encourage." *Id.* at 4-5.

⁴⁵ Cellnet Communications, Inc. v. New Par, Inc., Order, 15 FCC Rcd. 13814 (2000) ("Cellnet").

⁴⁶ Cellnet at 13815 ¶ 2 (emphasis added).

⁴⁷ Cellexis International, Inc. v. Bell Atlantic NYNEX Mobile Systems, Inc., Memorandum Opinion and Order, 16 FCC Rcd. 22887 (2001) ("Cellexis").

CMRS provider and a CMRS reseller, and is wholly inapplicable here. "In short, the complaint alleges that Defendants violated [the Act] by refusing to continue to interconnect their cellular networks with Cellexis's switch *so that Cellexis could provide resale cellular service*." Further, the order issued in *Cellexis* did not reach the merits of the Section 201 claims by that company, but instead was solely focused on Cellexis' Section 202 claim. "At this juncture, Cellexis's *only remaining claim* is for violation of section 202(a) of the Act."

Many other comments agree that the *CMRS Interconnection Order*, and by implication its progeny, are inapplicable to the present case. As noted by several commenters, the *CMRS Interconnection Order* could not have stripped Verizon Wireless of its statutory interconnection duties set forth by Congress, nor did (or could) the Commission ever purport to do so. ⁵⁰ While the Commission may not have established a <u>mandatory</u> direct connection obligation on all CMRS carriers with respect to CMRS resellers, this is a far cry from finding that no individual CMRS carrier can ever be subject to an interconnection request from any other carrier. The Commission expressly reserved the authority to make case-by-case determinations to resolve interconnection disputes such as this one, and VW's objections to this procedure are baseless.

C. Section 251 is Irrelevant Here

Some wireless commenters appear to believe that their interconnection duties begin and end in Section 251 of the Act.⁵¹ That is clearly incorrect, because Section 251(i) expressly provides otherwise—"Nothing in this section shall be construed to *limit or otherwise affect* the Commission's authority under section 201." 47 U.S.C. § 251(i). Decisions establishing the scope

⁴⁸ Cellexis, at 22887, ¶ 1 (emphasis added).

⁴⁹ *Cellexis*, at 22887-88, ¶¶ 1-2 (emphasis added).

⁵⁰ See COMPTEL at 7; McLeodUSA at 4;

⁵¹ See, e.g., CTIA at 2-3; Rural Cellular Association at 5-9.

of *mandatory* interconnection duties under Section 251, therefore, are entirely irrelevant to the Commission's exercise of its *public interest* interconnection power under Section 201.

The Commission has informed CMRS carriers that it will require interconnection when the public interest demands it. "[W]e remind all CMRS providers from whom interconnection is sought, that they are common carriers subject to the basic commands of Sections 201 and 202 of the Communications Act." Those commands include Section 201(a), which allows the Commission to require interconnection—when supported by a public interest finding—beyond the bare minimum mandated by Section 251. Thus, the fact that a CMRS carrier may satisfy its Section 251 duties simply by indirectly interconnecting via an ILEC tandem does not establish whether it the public interest requires physical connections under Section 201.

D. The Petition Does Not Seek a Rule of General Applicability

Verizon Wireless has argued that Neutral Tandem's Petition seeks a rulemaking applicable to all CMRS providers across the PSTN.⁵³ Such claims, however, ignore the plain language of Neutral Tandem's Petition, and are clearly meant as a scare tactic—ironically, Verizon Wireless' efforts to broaden this proceeding was not in the best interest of other wireless carriers. The Petition states plainly that this is a dispute between two carriers, and Neutral Tandem's Petition is carefully measured to limit its requested relief accordingly through the request for two-party adjudication.⁵⁴

The Petition seeks an order under Section 201(a) of the Act applicable to Verizon Wireless only,⁵⁵ requiring Verizon Wireless to permit direct connections for termination of only

⁵² *CMRS NPRM*, 10 FCC Rcd. at 10685, \P 38.

⁵³ See Verizon Wireless at 5-6, 8; Rural Cellular Association at 2; United States Cellular Corporation at 1; CTIA at 2.

⁵⁴ See generally Petition.

⁵⁵ See Petition at 1 (specifically requesting Commission resolution of disputes between Neutral Tandem and Verizon Wireless).

Neutral Tandem's traffic only;⁵⁶ only where traffic volumes justify it;⁵⁷ and only at Neutral Tandem's sole transport expense.⁵⁸ Neutral Tandem does not ask the Commission to find that any other direct connections between any other carriers are in the public interest. Several comments in this proceeding have similarly acknowledged that Neutral Tandem's Petition is designed only to apply to the particular facts and circumstances surrounding the Parties involved in this dispute, which is the nature of a petition under Section 201, and is not intended to act as a rulemaking of general applicability.⁵⁹ As such, VW's floodgates ploy to alarm the Commission and other wireless carriers with the fear of a hypothetical onslaught of interconnection petitions is clearly unsupportable.

Finally, VW's arguments that Section 201 notice and hearing requirements would be nullified through a grant of Neutral Tandem's Petition are clearly wrong. First, Neutral Tandem has not sought a generally-applicable rulemaking through its Petition, but instead has requested a case-by-case determination based on the relevant facts of its own, two-year dispute with Verizon Wireless. Second, nowhere has Neutral Tandem asserted that traffic volume levels alone should be sufficient for any carrier to automatically compel direct interconnection with any CMRS carrier, without affording notice and hearing required by the Act. Verizon Wireless has been afforded the opportunity for hearing required of the Act through the institution of this proceeding

⁵⁶ See Petition at 1 (specifically requesting "the Commission to order Verizon Wireless to establish direct physical connections and through routes with Neutral Tandem.").

⁵⁷ See Petition at 19 (requesting direct connections "at any Verizon Wireless switch to which Neutral Tandem (or its customers) has at least three DS1s' worth of traffic").

⁵⁸ See Petition at 19 (requesting "the Commission order Verizon Wireless to permit direct connections by Neutral Tandem at Neutral Tandem's expense").

⁵⁹ See, e.g., COMPTEL at 2; Integra at 1; McLeodUSA at 1.

⁶⁰ See Verizon Wireless at 23-24.

and through the opportunity to file comments (which it has done),⁶¹ present evidence, which it has done,⁶² and as such, its arguments in this regard ring hollow.

If Verizon Wireless continues its policy of outright refusal to interconnect, it undoubtedly will have many more opportunities for hearing under Section 201 in the future. VW's procedural objection is unfounded, and should be disregarded by the Commission.

IV. VERIZON WIRELESS' POLICY ARGUMENTS ARE MISGUIDED

A. The Petition is Not Appropriate for Consideration in the Intercarrier Compensation Proceeding

Verizon Wireless and other wireless commenters have argued that this matter be considered in the Commission's Intercarrier Compensation proceeding ("ICC").⁶³ This is an obvious ploy to delay, and thus deny consideration of the critical issues presented in the Petition by shunting them into a long-standing proceeding aimed at much more complex telecommunications compensation arrangements. Ironically, Verizon Wireless proposes that the issue of direct connections be considered in connection with the Missoula Plan, at the same time footnoting that it opposes adoption of that Plan,⁶⁴ thus confirming that its ultimate goal is to deter the Commission from taking any action at all on the issue. Referral of this important Petition to the ICC proceeding would be a dead end and would be contrary to the Chairman's commitment to Congress apply the lessons learned from Hurricane Katrina.

⁶¹ See, e.g., Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities of Alaska, 81 FCC 2d 304, 316 (1980) (stating that FCC notice and comment procedures may satisfy the Section 201 hearing requirement, citing Bell Telephone Co. of Pennsylvania v. FCC, 503 F. 2d 1250 (3d Cir.) cert. denied, 422 U.S. 1026 (1974)).

⁶² See Declaration of Cynthia Wells, WC Docket No. 06-159 (filed Aug. 24, 2006).

⁶³ See, e.g., Verizon Wireless at 8; CTIA at 8-9.

⁶⁴ Verizon Wireless at 10 n.22.

The ICC docket is primarily concerned with compensation arrangements between carriers that actually have interconnection arrangements, not the need for physical interconnection between unconnected carriers. Neutral Tandem is not selling VW any services, so no compensation is at issue. As such, the ICC docket is a wholly inappropriate forum for addressing the issues raised in this proceeding. Further, while Verizon Wireless makes passing remarks to "phantom traffic," which is a subject of compensation in the ICC proceeding, "phantom traffic" has never been an issue between the Parties involved in this proceeding, even though VW's passing remarks are clearly intended to imply otherwise. Verizon Wireless itself acknowledges the "fact-specific" nature of this proceeding, 65 which would be particularly ill-suited for resolution in a rulemaking proceeding aimed at the entire telecommunications industry. If Verizon Wireless genuinely believes that this proceeding should be considered in light of telecommunications compensation arrangements and phantom traffic issues, it should have raised those issues in their comments in that proceeding, instead of pretending that such issues are of such importance that this proceeding should be transferred to the ICC docket.

The ICC docket should not be used as a "recycling bin" by those persons seeking to delay decisions on issues they would rather the Commission not address. Dropping this case into the ICC, under VW's implied desire that the Petition be swallowed and lost among the serious and complex issues of intercarrier compensation, would thwart Neutral Tandem's access to administrative remedies required under the Act, deny Neutral Tandem due process consideration of its Petition, minimize the Commission's role as an expert arbitrator of disputes among telecommunications providers, and, most importantly, place the homeland security of the PSTN behind the corporate interests of Verizon Wireless. Two years is long enough to wait for relief.

⁶⁵ See Verizon Wireless at 9-10.

B. The Policy of "Market-Based Regulation" of CMRS Is Irrelevant in this Context

Verizon Wireless devotes many pages to arguing that mandatory interconnection is unnecessary for non-dominant carriers, and that Commission policy favors free operation of market forces in lieu of regulation in the wireless industry. Although these slogans might have some weight in other contexts, they ignore the specific circumstances that make Commission intervention necessary here. The Commission has previously recognized that regulation of inter-carrier interconnection may be necessary even in markets that are "vibrantly competitive" at the enduser level, due to the effective bottleneck carriers enjoy over termination to their end users. Where a carrier abuses that bottleneck by entirely refusing to interconnect, as Verizon Wireless has done here, regulatory intervention is not only proper but essential.

In particular, it is hypocritical of Verizon Wireless to tout a preference for "private negotiations and arrangements" when the whole reason this case is before the Commission is because Verizon Wireless *refuses* to negotiate interconnection on any terms whatsoever. This is not a case of companies in a competitive market that have a disagreement over terms, but rather a case of a carrier seeking to exploit a bottleneck by refusing to deal at all. When the initial term of the MSA between the Parties expired, Verizon Wireless sent Neutral Tandem a disconnection notification, not a revised interconnection proposal. Further, it acted in bad faith by continually

⁶⁶ See Verizon Wireless at 11-20.

See Integra at 1 ("The independent alternative provided by Neutral Tandem allows competitors to bypass bottleneck tandem facilities and deliver traffic in a more efficient and cost effective manner, in this case to one of the country's largest wireless providers."). "The requested interconnection would provide a competitive alternative to the incumbent LECs' historic stranglehold on tandem services for delivering traffic to one of the largest wireless providers in the United States." *Id.*, at 2-3. *See also* McLeodUSA at 2-3, 5.

⁶⁸ Verizon Wireless at 16.

suggesting it would continue the arrangement established in the MSA with Neutral Tandem, then sending a disconnection letter at the last possible moment.⁶⁹

The dispute between the Parties also involves a CMRS carrier attempting to dictate the facilities used to reach it. "Verizon Wireless should not dictate whether a third party carrier should use its own facilities, or the services of an incumbent LEC, or the services of a competitive wholesale provider like Neutral Tandem to deliver terminating traffic to Verizon Wireless." In so doing, Verizon Wireless is acting in an unreasonable, irrational, and anticompetitive manner, designed to protect the monopoly market position held by its corporate ILEC parent. Verizon and VW's intention to drive Neutral Tandem away from the monopoly controlled tandem service market cannot be allowed to stand.

The Commission has previously characterized terminating access services for competitive carriers as a bottleneck, and regulated the terms on which even *non-dominant* carriers—in markets that are otherwise "vigorously competitive"—offer such termination services. "Sprint and AT&T persuasively characterize both the terminating and the originating access markets as consisting of a series of bottleneck monopolies over access to each individual end user. Thus, once an end user decides to take service from a particular LEC, that LEC controls an essential component of the system that provides interexchange calls, and it becomes the bottleneck for

⁶⁹ As noted in the Petition, in the weeks leading to VW's disconnection notice, Verizon Wireless led Neutral Tandem to believe that Verizon Wireless was not going to terminate the relationship, but in fact expand it. Verizon Wireless made numerous statements in this regard, informing Neutral Tandem that it was "investigating" getting Neutral Tandem more capacity in Chicago, Detroit, and New York City up until the termination window closed on the MSA. Neutral Tandem submits that Verizon Wireless acted in bad faith in this regard and issued the disconnection letter just days before the end of the contract termination window, thereby giving Neutral Tandem no chance to plan accordingly or seek an order from the FCC prior to the issuance of the disconnection letter.

⁷⁰ COMPTEL at 3.

⁷¹ See section IV.C below.

IXCs wishing to complete calls to, or carry calls from, that end user."⁷² The same is equally true of CMRS providers, as the Commission implicitly recognized in the *T-Mobile Declaratory Ruling* by requiring those providers to submit to binding arbitration with ILECs.⁷³

As Verizon Wireless has improperly used its terminating bottleneck to deny Neutral Tandem the ability to offer a competitive tandem services, Neutral Tandem respectfully requests the Commission grant the Petition.

C. Intervention in Interconnection Disputes is Appropriate in Cases of Carrier Misconduct

The Commission has stated that a CMRS carrier's refusal to interconnect would merit special scrutiny when the CMRS carrier is affiliated with an ILEC. It correctly recognized that ILEC-affiliated CMRS carriers may have an incentive to act in an economically irrational manner to secure a competitive advantage for ILEC owners or affiliates.

[T]he Commission stands ready to intercede in the event a CMRS provider refuses a reasonable request to interconnect. We will be particularly vigilant in policing, where they exist, any efforts by CMRS providers to deny interconnection in order to gain an unfair competitive advantage. For example, we would find LEC investment in, and affiliation with, the party denying interconnection an important factor in assessing whether such denial was motivated by an anticompetitive animus. Unlike independent CMRS carriers, LEC-affiliated CMRS carriers may have a unique incentive to deny interconnection so as to keep CMRS-to-CMRS traffic interconnected through the local exchange landline network, and to continue to collect CMRS interconnection charges from both sets of CMRS providers through their access charge structure. Such LEC ownership interests may play an important role in assessing whether a denial of interconnection is a reasonable business deci-

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⁷² Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Seventh Report and Order and Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9935, \P 30 (2001) (internal citations omitted) ("Seventh Report"). See also COMPTEL at 4.

⁷³ See Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order, CC Docket No. 01-92 (rel. Feb. 24, 2005) ("T-Mobile Declaratory Ruling").

sion or a form of anticompetitive conduct intended to raise rivals' costs of doing business and hence hinder competition.⁷⁴

As noted in the Petition, Verizon Wireless has gained nothing for itself by refusing to directly connect to Neutral Tandem.⁷⁵ "If costs of indirect interconnection through the LEC were higher than direct CMRS-to-CMRS interconnection, however, some potential might exist for CMRS providers to raise their rival's costs by denying direct interconnection, or increasing the price of direct interconnection to the price charged by the LEC for indirect connection."⁷⁶ Clearly, Verizon Wireless increases its own costs, as well as the costs of all indirect connecting carriers, through its refusal to establish direct connections with Neutral Tandem. Through its refusal, it has rejected the transport cost savings, as well as network efficiency savings direct connections with Neutral Tandem would provide. All connecting carriers will lose cost savings they could enjoy through a competitive alternative to the ILEC monopoly service and would incur actually more inefficient interconnections. This fact has been documented by Cbeyond in its comments to this proceeding.⁷⁷ This imposition of duplicative and unnecessary costs for ILEC services negates the value of the Neutral Tandem service, raises the cost of interconnection to VW's CMRS and Verizon's cable, IXC and CLEC rivals, and is profoundly anticompetitive. Verizon's refusal also denies all carriers and all the users of the PSTN the network redundancy benefits Neutral Tandem's services provide. Further, as noted above, VW's refusal coupled with Verizon's attempts to prevent indirect interconnection by Neutral Tandem denies Neutral Tandem the ability to terminate traffic to VW customers either directly or indirectly, thereby stunting the development of tandem competition. 78 Such refusals by both Verizon and VW fly in the face

⁷⁴ *CMRS NPRM*, 10 FCC Rcd. at 10687 (footnotes omitted).

⁷⁵ See Petition at 11.

⁷⁶ CMRS NPRM, 10 FCC Rcd. at 10682-86 (footnotes omitted).

⁷⁷ See Cheyond at 2 & Declaration of Brett Burgett.

⁷⁸ See Integra, at 4. Such

of Verizon's past requests that direct interconnection arrangements be made in cases of T-1 or more worth of traffic.⁷⁹

While Verizon Wireless maintains that it is not acting in the interests of its corporate controlling owner, 80 the facts loudly speak otherwise.

Verizon Wireless has an incentive to refuse to interconnect with Neutral Tandem. Verizon Wireless' incumbent LEC parent company has taken the position that Neutral Tandem cannot resell transit services to deliver traffic to Verizon Wireless in territories where Verizon is the incumbent LEC. By refusing to interconnect directly with Neutral Tandem, Verizon Wireless, along with its incumbent LEC parent, is executing a squeeze play to maintain a monopoly on tandem services.⁸¹

Further, VW's assertion that the traffic at issue was mostly within AT&T's ILEC territory is factually incorrect and entirely misses the point. Record and the Petition, the MSA was clearly designed to cover *all markets* where both Neutral Tandem and Verizon Wireless operate. Record Tandem, however, terminated relatively little traffic to VW in Verizon territories because of the limitations VW put on the connections between the two carriers. By failing to provide an adequate number (and capacity) of trunk ports, VW dramatically choked the amount of traffic Neutral Tandem was capable of terminating in New York, for example, and it flatly refused to allow any direct connections in any other Verizon market.

The telecommunications traffic in New York, where Verizon Wireless is the leading wireless carrier, is roughly twice the size of Chicago's, and Neutral Tandem expects that with

⁷⁹ Verizon and VW's inconsistencies with respect to the traffic levels they claim justify direct connections are summarized at Section V.D below.

⁸⁰ See Verizon Wireless at 21.

Integra at 4. See also CMRS NPRM, 10 FCC Rcd. at 10687.

⁸² See Verizon Wireless at 22.

⁸³ See Petition at 4.

adequate trunking in New York, it would see nearly double the amount of traffic the company has in Chicago. Due to VW's unwillingness to provision adequate capacity in the New York market, this did not come to fruition. He Neutral Tandem is only connected to one of the nine VW switches in New York; and VW permitted it to terminate only four (4) T-1s at that switch although Neutral Tandem had enough traffic to fill 200 T-1s. As illustrated in Attachment A, Neutral Tandem has traffic from 71 competitive switches in New York to deliver to the nine Verizon Wireless switches in the market, and even in those few instances where there is a direct connection in place between Verizon Wireless and a competitive switch connected to Neutral Tandem, Neutral Tandem still operates as the overflow route for the direct connected competitive switch.

More importantly, VW's refusal to provide direct connections to Neutral Tandem prospectively keeps Neutral Tandem out of Verizon territories where both of the Parties operate.⁸⁶ This is the point of the Petition (not to mention the MSA), as well as the reason why Neutral Tandem's interconnection requests have been rebuffed by Verizon Wireless.

The fact that Verizon Wireless is foregoing effective interconnection and cost savings, and that its refusal to interconnect provides an unfair competitive advantage to its parent company, demonstrate that Verizon Wireless is in violation of Sections 201 and 332 of the Commu-

⁸⁴ See Petition at 4 (describing the limits Verizon Wireless placed on the trunking arrangements between the Parties in New York and other markets).

Even where carriers are directly connected, prudent network design dictates that at least one overflow route (via a tandem) be available. VW's refusal to accept traffic from Neutral Tandem therefore forces *every* competitive carrier in the New York market to connect to Verizon's tandem switches.

Neutral Tandem is not privy to VW's strategy and does not know why VW refuses to accept terminating traffic even where Verizon is not the ILEC tandem provider, but speculates that VW may believe that a consistent refusal to interconnect would be considered less obviously suspect by the Commission than a refusal limited to Verizon ILEC territories. In other words, the refusal to interconnect in non-Verizon territories may be a smokescreen to deter scrutiny of the in-region refusals. Also, denying interconnection outside of the Verizon region weakens Neutral Tandem's competitive position overall, thus benefiting Verizon's tandem services business.

nications Act. Establishing direct trunking arrangements with Neutral Tandem will expand interconnectivity among various networks, promote competition, add redundancy to the PSTN thereby benefiting homeland security and disaster recovery, and provide alternative services to IXC, CLEC, cable, and CMRS carriers that previously had no options available to them. As such, the requested direct trunking arrangements would serve the public interest.

V. VERIZON WIRELESS' FACTUAL OBJECTIONS ARE IRRELEVANT AND INCORRECT

A. Neutral Tandem Serves a Valuable Business Need

VW's attempts to disparage Neutral Tandem's business model and the service the Company provides to its customers are wholly unfounded, and have no place in the substance of the dispute between the Parties. While Verizon Wireless insists on describing Neutral Tandem as a "fee collecting middleman," the efficiencies and network redundancies provided to the entire PSTN by Neutral Tandem's services, as well as the comments filed by Neutral Tandem's customers and other parties in support of this Petition and Neutral Tandem's services, speak for themselves. Numerous commenters in this proceeding have noted the public interest value of the services Neutral Tandem provides, as well as the cost savings Neutral Tandem yields versus ILEC tandem services. Obviously, if Neutral Tandem were not adding economic value to the network through its facilities-based services, its customers (which include the major wireless carriers) would not agree to pay its services, since they have alternatives. Carriers, such as Cingular, would also not freely agree to interconnect with Neutral Tandem (even when it is choosing to use its affiliate's tandem to send traffic in a market) if Neutral Tandem caused the

⁸⁷ See, e.g., McLeodUSA at 1; COMPTEL at 3-4; One Communications at 1; Joint Companies at 1; Integra at 2-3; Cbeyond at 2. Neutral Tandem also finds it telling that Verizon Wireless describes Neutral Tandem as a fee-collecting unnecessary middleman, while on the other hand praising its ILEC parent Verizon's for-profit tandem services. See Verizon Wireless at 24.

⁸⁸ See Cbeyond at 2.

significant cost alleged by Verizon Wireless and did not add value (including lowering transport cost) to their networks.⁸⁹

Further, it is important noting that Neutral Tandem is not seeking to collect any charges from Verizon Wireless. If VW does not wish to utilize Neutral Tandem's service, it has no obligation to do so. Neutral Tandem only asks that VW be required to accept *terminating* traffic from Neutral Tandem, delivered at no charge to VW. Neutral Tandem will pay 100% of the cost to transport the traffic to VW's switch sites, thus reducing VW's transport cost. VW's outright refusal to interconnect amounts to declaring that VW should be able to substitute its own judgment for that of all the other carriers in the market—carriers who are voluntarily paying for the Neutral Tandem's services—in determining what services provide the best value!

B. Verizon Wireless Mischaracterizes the MSA Dispute

Verizon Wireless devotes several pages of its comments to complaining about disputes that allegedly arose between it and Neutral Tandem under the MSA. Although VW's complaints are baseless, they are also irrelevant here. The issue before the Commission is whether direct connections are in the public interest, not whether VW should or should not have terminated the former agreement between the Parties.

Attachment B contains examples of actual agreements with national wireless carriers to show such carriers agreed to freely allow Neutral Tandem to terminate traffic to such carriers switches separate from whether the carriers decide to send Neutral Tandem traffic. Each agreement has been in place for over two years, and there has never been any dispute under them, including regarding any technical, or operational issues. Neutral Tandem pays no compensation to these carriers above the cost incurred by Neutral Tandem for the transport to deliver the traffic. Most importantly, these agreements demonstrate the simplicity with which these matters can be addressed assuming both parties act in good faith.

⁹⁰ See Petition at 3-4.

⁹¹ See, e.g., Billed Party Preference for InterLATA 0+ Calls, Second Report and Order on Reconsideration, CC Docket No. 92-77 (rel. Jan. 29, 1998) (addressing issues that occurred where property owner, rather than the caller, determined which carrier would receive 0+ calls). See also Billed Party Preference InterLATA 0+ Calls, Report and Order and Request for Supplemental Comment, CC Docket No. 92-77 (rel. Nov. 6, 1992) (addressing the need to ensure that the customer who pays for the call is allowed to use the carrier of their choice).

First, in defending its decision to terminate the MSA with Neutral Tandem, Verizon Wireless claims that Neutral Tandem sent traffic to Verizon Wireless from carriers without interconnection agreements with Verizon Wireless. Peutral Tandem sent to Verizon Wireless the exact same traffic Verizon Wireless received from the LEC tandems. The ILECs from whom Verizon Wireless receives tandem transit services do not engage in such deliberate call-blocking practices. Verizon Wireless has never asked the ILEC tandem providers to block traffic from selected carriers and it should not be able to discriminate against Neutral Tandem by asking Neutral Tandem to block such calls. Moreover, neither Neutral Tandem nor the ILEC has any authority to block such calls destined for termination to Verizon Wireless.

In addition, VW has made inconsistent statements on this issue in this proceeding: it has said: "[N]o connectivity will be lost as a result of the termination of the agreement [with Neutral Tandem], given that Verizon Wireless still connects directly with many of the carriers that Neutral Tandem serves and indirectly with other carriers through the ILEC tandem." In other words, even while VW argues that Neutral Tandem should not have terminated traffic from certain carriers, it simultaneously states that the same traffic may be passed through ILEC tandems with no problem.

Second, Verizon Wireless claims that Neutral Tandem did not provide traffic reports for those connections established between the two carriers, but Verizon Wireless did not identify any particular records it had ever requested from Neutral Tandem. ⁹⁴ This is because Verizon Wireless never made any such request that was unfulfilled by Neutral Tandem. Neutral Tandem remains willing and able to provide reports to Verizon Wireless upon request, just as Neutral

⁹² See Verizon Wireless at 4.

⁹³ Verizon Wireless at 20.

⁹⁴ See Verizon Wireless at 25.

Tandem provides such reports to many of its carrier customers upon request. Further, contrary to VW's suggestion, Neutral Tandem's billing system provides more timely and complete call detail than the typical ILEC tandem does. This fact has been confirmed by many of Neutral Tandem's customers as well as by the reports received by Neutral Tandem from ILECs for overflow transit calls.

C. Verizon Wireless Mischaracterizes the Petition's Requested Relief

In its comments, Verizon Wireless also tries to paint the Petition overly broad as requesting direct connections in *every area* served by both Verizon Wireless and Neutral Tandem. Clearly, this grossly misstates the plain wording of the Petition: "[Neutral Tandem] requests that the Commission order Verizon Wireless to permit direct connections by Neutral Tandem ... at any Verizon Wireless switch to which Neutral Tandem (or its customers) has *at least three DS1s*' worth of traffic." VW's claim that Neutral Tandem has provided no standard on how much traffic is sufficient to justify direct connection therefore is wrong on its face. Neutral Tandem's traffic termination agreements with other national wireless carriers have no minimum traffic threshold, but were freely entered into nonetheless by those carriers. Rather, they merely require that the capacity connected between the carriers be monitored for utilization consistent with industry standards and resized if necessary.

⁹⁵ Petition at 19 (emphasis added).

⁹⁶ Verizon Wireless at 17, 18.

⁹⁷ Verizon Wireless' parent Verizon has proposed a standard for direct connection of traffic levels equal or above one DS1 (alternatively referred to as a T-1). See Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for the Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, Memorandum Opinion and Order, 17 FCC Rcd. 27039, 27079-84 (Wireline Comp. Bur. 2002) ("Virginia Arbitration Order").

⁹⁸ See Attachment B.

D. Verizon Wireless' Claims that Direct Connection Would Be Inefficient are Unsupported

The Commission has previously recognized that CMRS carriers' refusals to interconnect would, at a minimum, be deemed suspect where that refusal would be economically inefficient, and forego cost savings. The Commission declared that refusals under such circumstances would likely be in violation of Section 201:

[E]stablished industry representatives (cellular carriers, LECs, trade associations) have represented that when traffic volumes between CMRS systems justify direct connections, the industry will implement interconnection because it will make business sense to do so. The current record presents the Commission with no reason to believe that this will not be the case, and we fully expect all CMRS providers to behave in an economically rational manner and to implement direct and efficient network connections at reasonable costs when the opportunity and need arise. ⁹⁹

VW's contention that direct connections would not be efficient flies in the face of its parent's repeatedly-argued position, as well as the fact that nearly every interconnection agreement filed under Section 252 requires that carriers establish direct connections between switches when there are traffic levels greater than the capacity of a T-1. VW's own counsel in this proceeding, Charon Philips, testifying under oath before the Georgia Public Service Commission, directly contradicted VW's efficiency claim:

Direct interconnection arrangements are generally efficient where the volume of traffic exchanged reaches 500,000 minutes of traffic on a monthly basis. Where traffic volumes are below the threshold, Verizon Wireless utilizes indirect interconnection arrangements, which do not require the construction or leasing of dedicated facilities but do allow for the exchange of traffic with all the [smaller carriers] that are also interconnected with the tandem facilities of larger ILECs. ¹⁰¹

⁹⁹ *CMRS NPRM* at 10684-85, ¶ 37.

¹⁰⁰ See generally Virginia Arbitration Order.

¹⁰¹ Direct Testimony of Charon Phillips, Regulatory Counsel, Verizon Wireless, Georgia Public Service Commission Docket No. 16772-U (filed July 1, 2004) (emphasis added). "Asserting the need to avoid tandem exhaustion, Verizon seeks to include language requiring AT&T and Cox to establish direct

As Neutral Tandem's requested relief would be applicable to those markets where the Parties would exchange more than 500,000 minutes of traffic per month, Verizon Wireless has already admitted that direct connection with Neutral Tandem would be "efficient." 500,000 minutes of use typically equates to two (2) T-1s. In comparison, Neutral Tandem, consistent with the Commission's finding in the Virginia Arbitration decision, 102 requests interconnection for three (3) T-1s, which equates to approximately 750,000 minutes of use per month. VW's argument that direct connection with Neutral Tandem would not enhance network efficiency 103 is clearly contradicted by its previous testimony as to what level of traffic dictates the efficiency of direct connections as well as by the statements and actions of its parent Verizon. 104

Further, as stated in Neutral Tandem's Petition, VW's refusal to establish direct trunking arrangements with Neutral Tandem discriminates against Neutral Tandem. Ignoring the clear cost advantages provided by Neutral Tandem in order to protect its ILEC parent's tandem services monopoly position, Verizon Wireless simply retorts that it is not acting in a discriminatory and anti-competitive manner because Neutral Tandem and ILECs are not "similarly situated" and because "ILECs provide much broader connectivity than Neutral Tandem does." Such arguments are clearly disingenuous. How will Neutral Tandem increase its customer base to be equivalent to the ILECs if ILEC-affiliated carriers like Verizon Wireless, one of the

trunks to a Verizon end office when either petitioner exchanges traffic volumes corresponding to a DS-1 level of traffic with a particular end office." *Virginia Arbitration Order* at 27079, ¶ 77.

¹⁰² See Virginia Arbitration Order, at 27085-86.

¹⁰³ See Verizon Wireless at 15.

 $^{^{104}}$ See Cbeyond at 1-3; Integra at 1; Joint Commenters at 1; McLeodUSA at 2-3; and One Communications at 1.

¹⁰⁵ See Verizon Wireless at 23.

¹⁰⁶ See Attachment A (demonstrating that Verizon tandems are toll booth for transit to Verizon Wireless in New York).

largest carriers in the country, deny Neutral Tandem the ability to terminate traffic? Such refusal is intended to act as an anti-competitive barrier to entry, and Neutral Tandem respectfully requests that the Commission find the relief requested in the Petition to be in the public interest, notwithstanding VW's hollow non-discrimination arguments.¹⁰⁷

Finally, VW's attempt to convince the Commission that it need not support Neutral Tandem's request because the Company uses "legacy" technologies is particularly disingenuous. ¹⁰⁸ Unsupported statements that Internet Protocol ("IP") technology may one day overtake the need for tandem services should not be a basis by which to render a decision on Neutral Tandem's pending Petition. Hypothetical future market activity is no basis to deny the immediate relief requested by the Petition, which concerns current network arrangements, with clear implications on today's market efficiencies and the security of the PSTN. Simply stated, Neutral Tandem respectfully requests that the Commission grant the relief requested under the facts presented in this proceeding and allow future technology advances make their market effects on their own accord.

E. Verizon Wireless' Claims that Direct Connection Would Lead to Administrative Burdens are Without Merit

VW's claims that "administrative burdens" will arise should Neutral Tandem be allowed direct interconnection with its network are disingenuous. Neutral Tandem stresses that its dispute with Verizon Wireless is not about the terms of such interconnection, but the fact that Verizon Wireless refuses to interconnect at all on any terms at all. VW's (hypothetical) fears over the terms and conditions of interconnection can be addressed through appropriate contract

¹⁰⁷ See Integra at 4 (noting that VW's refusal, combined with Verizon's refusal to allow resale of transit, completely squeezes Neutral Tandem who cannot offer direct <u>or indirect</u> terminations to Verizon Wireless, even for incidentally misrouted traffic).

¹⁰⁸ See Verizon Wireless at 19.

¹⁰⁹ See Verizon Wireless at 13-14, 19.

terms between the Parties, not through outright refusal to interconnect. For example, VW's unfounded fears over "phantom traffic" and Neutral Tandem's passage of traffic from carriers without compensation arrangements with Verizon Wireless could easily be resolved through appropriate (and lawful) contract terms and record exchanges, as they have been addressed in contracts between Neutral Tandem and other national wireless carriers (as shown in Attachment B). Such contract terms could also allay Verizon's fears of interconnection costs and the host of other fears over the terms and conditions of direct connections with Neutral Tandem. Moreover, the four and five page traffic termination agreements in Attachment B that have been in place for two years without incident between Neutral Tandem and two other national wireless carriers is a testament to the straight-forward nature of the issues at hand.

Verizon also claims that terminating its existing direct connections with Neutral Tandem will "free up" ports, 112 but that clearly is not the case. No ports will be "freed" on Verizon switches by the refusal of interconnection to Neutral Tandem, because the Neutral Tandem ports are already full of traffic flowing from Neutral Tandem. Thus, the same number of ports will be required to serve this traffic if the traffic moves to direct connections or to an ILEC tandem. Conversely, providing new port capacity to Neutral Tandem will not increase the net demand on VW switches, as long as Neutral Tandem loads those ports efficiently (as the traffic threshold Neutral Tandem proposes would require it to do). As such, the net port usage will remain the same, and it is disingenuous of Verizon Wireless to suggest otherwise.

Although VW appears mainly concerned over hypothetical administrative burdens to *itself*, it ignores the very real administrative burdens that the Commission will face if, as a result of its refusal to negotiate in good faith with other carriers, additional interconnection petitions are filed in the future.

¹¹¹ See Verizon Wireless at 25. However, as stated in the Petition, Neutral Tandem has already stated on the record that it will be willing to meet the transport costs associated with the direct connection, which accrues a net savings already to VW. See Petition at 9. Such savings have resulted in other large carriers agreeing to interconnection arrangements with Neutral Tandem even for just the termination of traffic. See Attachment B.

¹¹² See Verizon Wireless at 25.

VI. CONCLUSION

Given the network redundancy and homeland security benefits associated with Neutral Tandem's service offerings, as well as the impending network disruptions which will occur should Neutral Tandem's existing direct connections with Verizon Wireless be terminated, Neutral Tandem respectfully requests expedited treatment of the pending Petition, as requested by Neutral Tandem in the Petition. The issues raised in the Petition are a first test of the public safety and security commitments recently made by Chairman Martin to Congress, and expedited treatment of the Petition would be consistent with recent Commission action on other public-interest dominated emergency petitions. Given the potential harm to the public interest through delay, which would allow Verizon Wireless to disconnect existing direct connections and thwart the efficient tandem competition provided to competitive carriers terminating to Verizon Wireless end users, Neutral Tandem respectfully requests that the Commission undertake an expedited review of the pending Petition and Motion in this docket.

Earth Stations in the Bush Communities of Alaska, 81 FCC 2d 304, 316 (1980).

¹¹³ See Petition at 14-19. See generally TCR Sports Broadcasting Holding, LLP, v. Comcast Corporation, Memorandum Opinion and Designation Order, MB Docket No. 06-148 (rel. July 31, 2006) (ordering Administrative Law Judge to hold hearing within forty-five days of stay being lifted following Complainants' decision about whether to seek remedy under conditions imposed in Adelphia-Time Warner Cable-Comcast transaction). As Commissioner McDowell said in his separate statement in this proceeding, "speedy resolution of carriage disputes is critical." See id., Statement of Commissioner Robert M. McDowell, at 1. See also Joint Petition of CPI Microwave, Inc., and Midwestern Relay Co. for an Order to Show Cause with Respect to American Telephone and Telegraph Co., et al., 49 FCC 2d 778, 779-80 (1974) (Section 201(a) petitions raise "significant public interest factors" and should be resolved as expeditiously as possible); Policies Governing the Ownership and Operation of Domestic Satellite

¹¹⁴ See generally Time Warner Cable, Order, MB Docket No. 06-151, at ¶ 7 (Media Bur. rel. Aug. 3, 2006) (awarding interim relief pending decision on merits less than two weeks after filing of emergency petition where required by public interest considerations, and expedited pleading cycle established). The Media Bureau affirmed this decision only four days later. See Time Warner Cable, Order on Reconsideration, MB Docket No. 06-151 (rel. Aug. 7, 2006). The agreements provided as Attachment B, which other wireless carriers found satisfactory, demonstrate the straightforward nature of what Neutral Tandem seeks.

Respectfully submitted,

/s/

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Facsimile: (312) 346-3276

Dated: September 25, 2006

Attachment A



Make every minute count with Neutral Tandem.

Homeland Security Benefit: Tandem Redundancy

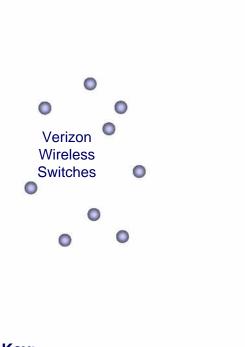
BEFORENeutral Tandem: Bell tandems are a single point of failure

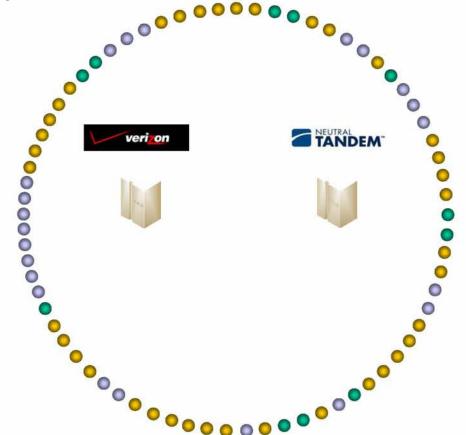
AFTERNeutral Tandem:

- Diverse Carrier
- Diverse Switch Site
- Diverse Switch
- Diverse Transport
- Diverse Routes

Actual New York Example:

- NT connects 71 switches from
- 25 different carriers in
- 35 different buildings using
- 9 different fiber providers





Key:

- Wireless Switch
- CLEC Switch
- Cable/IP Switch



Make every minute count with Neutral Tandem.

Homeland Security Benefit: Tandem Redundancy

Without **Neutral Tandem:**

- Verizon Wireless switches lack redundant tandem connection
- Exposes millions of corporate and consumer end users to extended out of service condition in the event of a tandem outage

Actual New York Example:

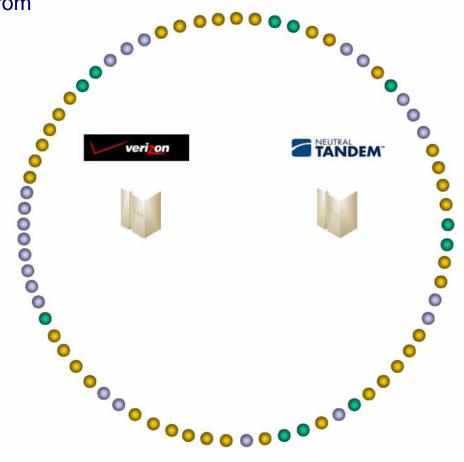
- NT connects 71 switches from
- 25 different carriers in
- 35 different buildings using
- 9 different fiber providers







- Wireless Switch
- CLEC Switch
- Cable/IP Switch



Attachment B

Redacted Neutral Tandem Agreements with Two National Wireless Carriers

INTERCONNECTION AGREEMENT

This Interconnection Agreement ("Agreement") is entered into by and between with offices located at and Neutral Tandem, Inc., with offices located at 2 North LaSalle Street, Suite 1615, Chicago, IL 60602 ("Neutral Tandem").

WHEREAS, is a Commercial Mobile Radio Services ("CMRS") provider holding licenses to operate from the Federal Communications Commission throughout the United States; and

WHEREAS, Neutral Tandem is a provider of transiting services to telecommunication companies interconnecting with its tandem facilities in various locations; and

WHEREAS, and Neutral Tandem wish to establish the terms and conditions for the interconnection of network to Neutral Tandem in any MTA in which both carriers operate; and

WHEREAS Neutral Tandem and desire to provide for the exchange of traffic between telecommunication companies interconnected with Neutral Tandem and using Neutral Tandem as a transit service provider.

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the Parties agree as follow:

- 1. <u>Term of Agreement</u>. This Agreement shall become effective upon execution of the Agreement by both Parties and have an initial term of one year. Unless renegotiated pursuant to Section 6 herein, this Agreement shall automatically renew for successive one (1) year periods. Upon completion of the initial term, either party may terminate this agreement upon (60) sixty days prior notice.
- 2. <u>Definition of "Local Traffic"</u>. Telecommunications traffic exchanged between a local exchange carrier and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in 47 C.F.R. §24.202(a).
- 3. <u>Definition of a "Mobile Switching Center" or "MSC".</u> A switch that performs, amon gother things, the switching of calls between and among its End User Customers and the End User Customers of other mobile or landline networks. The MSC is used to interconnect Trunk circuits with Tandem switches and/or other MSCs. The MSC also coordinates inter-cell and inter-system call hand-offs and records all system traffic for analysis and billing.

- 4. <u>Definition of "Transiting Traffic".</u> Traffic between two parties, one of which is not a Party to this Agreement, carried by a Party that neither originates nor terminates that traffic on its network while acting as an intermediary.
- 5. <u>Exchange of Traffic</u>: Only Local Traffic originated by customers of Neutral Tandem shall be delivered to under this Agreement. may deliver Local Traffic destined to customers of Neutral Tandem under the compensation provisions below.
- 6. Compensation for Call Transport and Termination: Neutral Tandem will allow for and will terminate Local Traffic without compensation from Neutral Tandem for the term of this Agreement. By accepting Local Traffic from Neutral Tandem without compensation from Neutral Tandem, in no way waives it right to compensation for such traffic from the originating carrier.
- Compensation for Transit Traffic: Neutral Tandem agrees to accept Transiting Traffic 7. and deliver such Transiting Traffic to third parties interconnected with the Neutral from Tandem tandem ("Transit Service"). Neutral Tandem shall provide Transit Service pursuant to the applicable Neutral Tandem tariffs, but in the case of any inconsistency, this Agreement, including the attached Pricing Schedules, shall take precedence over any applicable shall pay Neutral Tandem a transit service charge as set tariff. Each Party acknowledges forth in the Pricing Schedule attached hereto for traffic originated by and delivered to Neutral Tandem for transport to a third party carrier interconnected to the Neutral Tandem tandem. As the Parties agree to a Pricing Schedule for additional markets, those will be added to and be part of this Agreement. shall not be responsible, and Neutral Tandem shall not bill , for Transit Traffic originated by third party carriers interconnected to Neutral Tandem's tandem facilities and delivered to.
- 7. <u>Facility Compensation</u>: Neutral Tandem shall be responsible for all facilities and transport of Local Traffic including, but not limited to, any muxing, port, or termination costs associated with delivering Local Traffic to or from MSC to or from Neutral Tandem's tandem location.
- 8. Records Exchange: Neutral Tandem shall pass the call detail information required to permit billing of reciprocal compensation charges on all calls originating from carriers interconnected to the Neutral Tandem tandem and terminating traffic to If a carrier interconnected with Neutral Tandem does not generate sufficient call records to permit such billing, Neutral Tandem will provide such information at no cost to
- 9. Network Maintenance: The Parties will work cooperatively to install and maintain a reliable network. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government, etc.) to achieve this desired reliability, subject to the confidentiality provisions herein. Neutral Tandem will provide non-discriminatory maintenance intervals that are consistent with the like type services which it provides to itself.

10. Network Management:

- 10.1 Neutral Tandem agrees to only pass traffic according to NPA/NXXs they have screened and sized trunks appropriately for.
- 10.2 Each Party shall provide a 24-hour contact number for network traffic management issues to the other's surveillance management center,
- 10.3 Neither Party will use any service provided under this Agreement in a manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's End User Customers. Either Party will provide the other Party immediate notice of said impairment.
- 10.4 The characteristics and methods of operation of any circuits, facilities or equipment of either Party or that of a third party in conjunction with either Party's facilities, shall not materially interfere with or impair service over any facilities of the other Party, its Affiliate companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carrier over their facilities or create electrical hazards to the employees of any of them or the public, or malfunction of either Party's billing equipment. If either Party causes an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.
- 9. <u>Trunk Servicing.</u> If a Trunk Group is under 75% of centum call seconds capacity on a monthly average basis for each month of any three consecutive months period, either party may request the issuance of an order to resize the Trunk Group which shall be left with not less than 25% excess capacity. If Neutral Tandem adds capacity in anticipation of growth beyond three months, the parties agree to meet and discuss prior to deciding to resize the trunk group.

may agree to extend the period of underutilization if Neutral Tandem can demonstrate the capacity need.

10. <u>SS7.</u> SS7 Out of Band Signaling (CCS/SS7) shall be the signaling of choice where technically feasible for both Parties.

- 11. Nondisclosure. The Parties to this Agreement anticipate and recognize that they will exchange or come into possession of data about each other's customers and each other's business as a result of this Agreement. Each Party agrees 1) to treat all such data as strictly confidential and 2) to use such data only for the purposes of performance under this Agreement. All customer data will be subject to this Section, whether or not designated confidential. The foregoing shall not apply to information in the public domain.
- 12. Resolution of Disputes. Each Party to this Agreement will appoint a good faith representative to resolve any dispute arising under this Agreement.
- 13. <u>Compliance</u>. The Parties hereto agree to comply with all current Federal and State laws and regulations concerning the services provided under this Agreement.
- 14. <u>Complete Terms</u>. This Agreement constitutes the entire Agreement between the Parties. The Parties agree to negotiate in good faith any issues related to the furnishing of services under this Agreement arising during the course of performance but are not otherwise included in this Agreement.
- 15. Change in Law. The Parties shall comply with any applicable orders, rules or regulations of the FCC, appropriate Commissions and federal and state law during the term of this Agreement. If there is a material change in law regarding the subject matter of this Agreement, either party may require negotiation of new terms and conditions to conform this agreement to that change in law.

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Name: Ro	onald W. Gav	illet
Title: _Exe	cutive Vice I	resident
Date:	1/1/04	<u>, </u>

INTERCONNECTION & TERMINATION AGREEMENT

This Interconnection and Termination Agreement ("Agreement") is entered into as of the day of April, 2004 ("Effective Date"), by andC, with offices located at and Neutral Tandem, Inc., with offices located at 2 North LaSalle Street, Suite 1615, Chicago, IL 60602 ("NT") (NT and are each referred to as "Party" or collectively as the "Parties").
WHEREAS, is a Cellular Mobile Radio Service (CMRS) provider within the Chicago Metropolitan Trading Area (MTA); and
WHEREAS, NT is a provider of transiting services to telecommunication companies interconnecting with its tandem facilities; and
WHEREAS, and NT wish to establish the terms and conditions for the interconnection of network to NT; and
WHEREAS desires to provide for the termination of traffic from telecommunication companies interconnected with NT and using NT as a transit service provider.
NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the Parties agree as follow:
1. Term of Agreement. This Agreement shall become effective upon execution of the Agreement by both Parties and have an initial term of two years. Unless renegotiated pursuant to Section 6 herein, this Agreement shall automatically renew for successive one (1) year periods. Upon completion of the initial term, either party may terminate this Agreement upon (60) sixty days' prior notice. Notwithstanding the foregoing, either party may terminate this Agreement at any time on sixty (60) days notice to the other party.
2. <u>Definition of Transit Traffic.</u> Traffic terminating to via NT acting as an intermediary for the originating carrier. The originating carrier of transit traffic, not and not NT, is responsible for payment of the applicable transit and termination charges.
3. Exchange of Traffic: NT will transit to traffic that originates and terminates within the same local calling area, as defined in the incumbent telephone company's local exchange service tariff, in which an end user may complete a call without incurring toll charges. In Illinois, for example, the local calling area is limited to any call originating and terminating within the incumbent local exchange carrier, Ameritech-Illinois, bands A, B, and C. currently has no plans to originate calls through NT. Only Transit Traffic originated by customers of NT shall be delivered to under this Agreement. will give prompt notice to NT when and if a decision is made to originate traffic to NT's customers using NT's service. Upon receipt of such notice, a separate agreement will be negotiated by NT and which will terminate this agreement. Alternatively,

could purchase services from NT pursuant to the applicable NT tariff(s) by submitting the attached service order.

- 4. Compensation for Call Transport and Termination NT will allow for and will terminate Transit Traffic without compensation from NT. Nothing in this Agreement will alter the manner in which bills originating carriers for terminating Transit Traffic. NT will bill originating carriers sending Transit Traffic to through NT for transit and tandem service, and NT will not bill for such services under this Agreement.
- 5. <u>Facility Compensation</u>: NT shall be responsible for all the transport cost of delivering Transit Traffic to 's switch sites from NT's tandem(s) location.
- 6. Records Exchange: NT shall pass the call detail information required to permit billing of compensation charges on all calls originating from carriers interconnected to the NT tandem and terminating traffic to NT agrees not to change, manipulate, or in any way intentionally and fraudulently modify traffic line records, including CPNI and ANI.
- 7. Trunk Servicing. If after a six month ramp up period a trunk group is under 70% of centum call seconds capacity on a monthly average basis for each month of any three consecutive months period, either party may request the issuance of an order to resize the trunk group, which shall be left with not less than 25% excess capacity. If NT adds capacity in anticipation of growth beyond three months, the parties agree to meet and discuss prior to deciding to resize the trunk group.

 may agree to extend the period of underutilization if NT can demonstrate the additional capacity is needed.

Nondisclosure.

- A. It may be necessary for either Party, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). Nothing in this agreement shall be deemed proprietary. All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall when reduced to writing be clearly marked with a confidential or proprietary legend.
- B. <u>Use and Protection of Information</u>. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose

except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

- C. Exceptions. Recipient will not have an obligation to protect any portion of the Information which: (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; or (b) is lawfully obtained by Recipient from any source other than Discloser; or (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient, or (e) is disclosed pursuant to a valid order of court or regulatory body, provided the recipient gives the Discloser prior written notice of such order.
- D. Recipient agrees to use the Information solely for the purposes performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the Federal Communications Commission or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.
- E. Recipient agrees not to publish or use the Information for any advertising, sales promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- F. The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, or application which is now or may hereafter be owned by the Discloser.
- G All Proprietary Information shall remain the property of the Discloser, and all documents or other tangible media delivered to the Recipient that embody such Proprietary Information shall be, at the option of the Discloser, either promptly returned to Discloser or destroyed using appropriate and reasonable means, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Proprietary Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Recipient's need for it has expired and (ii) the expiration or termination of this Agreement.
- H. The Parties agree that an impending or existing violation of any provision of this Section would cause the Discloser irreparable injury for which it would have no adequate remedy at law, and agree that Discloser shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity, including both specific performance and monetary damages. In the event of any breach of this Section for which legal or equitable relief is sought, all reasonable attorney's fees and other reasonable costs associated therewith shall be recoverable by the prevailing Party.
- Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section shall survive and continue in effect until two (2) years after the expiration or

termination date of this Agreement with regard to all Information exchanged during the term of this Agreement.

- 9. Resolution of Disputes. Each Party to this Agreement will appoint a good faith representative to resolve any dispute arising under this Agreement. If a dispute arises under this Agreement, including disputes relating to any portion of an amount due to a party, the disputing party shall give written notice of the dispute to the other party. If the parties are unable to resolve the issues within 30 days after delivery of notice, each of the parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives. provided, however, that all reasonable requests for relevant information made by one party to the other party shall be honored. If the Parties are unable to resolve the dispute within 90 days after the Parties' appointment of designated representatives, then either Party may seek enforcement of such Party's rights and remedies available hereunder or at law or equity. The prevailing Party shall be entitled to recover its attorneys' fees and costs. In no event shall be liable to NT for any special, incidental or consequential damages.
- 10. <u>Compliance</u>. The Parties hereto agree to comply with all current Federal and State laws and regulations concerning the services provided under this Agreement.
- 11. <u>Complete Terms</u>. This Agreement constitutes the entire Agreement between the Parties. The Parties agree to negotiate in good faith any issues related to the furnishing of services under this Agreement arising during the course of performance but are not otherwise included in this Agreement.
- 12. <u>Waivers</u>. Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 13. <u>Assignment</u>. Other than to an affiliate, neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Notice of assignment must be given at least 60 days in advance of the proposed assignment.
- 13. <u>Relationship of Parties.</u> It is the intention of the Parties that each shall be an independent contractor and nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

14. Notices

- A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be made in one of two manners:
 - (1) in writing, delivered by certified or registered mail, or
- (2) by facsimile transmission, provided that a paper copy is also sent by certified or registered mail.
- **B.** All notices, consents, approvals or other communications required or contemplated by this Agreement shall be made to the following addresses:

NT Neutral Tandem, Inc. 2 N. LaSalle Street Suite 1615 Chicago, IL 60602 Attention: Legal

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

C. Notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent. Notice by facsimile shall be effective on the date set forth on the confirmation produced by the receiving facsimile machine when received prior to 5:00 p.m. in the recipient's time zone, but the next business day when received at 5:00 p.m. or later in the recipient's time zone.

Neutral	Tandem, Inc.	
ву: Ц	John Barne	Co
- /	C.O.O.	
Date: _	4-7-04	